



BC Farm Industry Review Board

March 11, 2020

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Chair
BC Broiler Hatching Egg Commission

Harvey Sasaki
Chair
BC Chicken Marketing Board

Gunta Vitins
Chair
BC Egg Marketing Board

Kevin Klippenstein
Chair
BC Turkey Marketing Board

Dear Sirs/Mesdames:

AVIAN INFLUENZA – CLEANING AND DISINFECTING COST COMPENSATION

The financial costs and risks associated with notifiable Avian Influenza for BC's poultry supply chains are well documented. In fall 2019, the BC Chicken Marketing Board (Chicken Board), the BC Broiler Hatching Egg Commission (Hatching Egg Commission), the BC Turkey Marketing Board (Turkey Board), and the BC Egg Marketing Board (Egg Board) presented a proposed solution to the BC Farm Industry Review Board (BCFIRB) for managing the exceptional costs related to cleaning and disinfecting during a notifiable Avian Influenza outbreak.

The following is BCFIRB's decision on the proposal.

Background

The first outbreak of notifiable Avian Influenza in B.C. in 2004 triggered a large scale coordinated effort between three levels of government and the poultry industries, resulting in

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Farm Industry Review Board**

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investment in planning, prevention and recovery. Three core recommendations were made related to emergency response planning; biosecurity standards and compensation.

In 2014 the poultry boards and producer associations proposed the formation of a captive insurance company to provide producer coverage for business losses as well as cleaning and disinfecting. As part of the proposal, the poultry boards would have made insurance coverage through the proposed captive insurance company mandatory for all producers.

In an August 14, 2014 decision¹ BCFIRB ordered that:

For all the reasons outlined in this letter, and in the exercise of BCFIRB's supervisory authority under the *NPMA*, the boards are directed not to exercise their regulatory authority under their schemes at this time for the purpose of supporting the proposed captive insurance company.

Should one or more of the board[s] propose proceeding with a more limited regulatory solution, that solution is to be submitted to BCFIRB, with rationale, for prior supervisory approval.

Subsequently, in 2015, government amended the *Natural Products Marketing (BC) Act (NPMA)* to enable all commodity boards to require producers to maintain insurance that covers losses resulting from the interruption or termination of production, or a notifiable disease.

In 2016 the four poultry boards, as part of a Mandatory Insurance Review Committee, established a five-phase work plan as follows:

- Phase 1: Why a financial response is needed?
- Phase 2: Scope of financial response
- Phase 3: Do the conditions of insurance exist?
- Phase 4: Do viable insurance delivery mechanisms exist?
- Phase 5: Mandatory insurance delivery mechanism

Reports were provided to BCFIRB and all stakeholders at the close of each Phase following stakeholder consultation and poultry board sign-off. On October 9, 2019, the poultry boards met with BCFIRB to review a final joint submission and answer questions.

Final Submission

In their final submission, the poultry boards conclude that a dedicated financial fund resource is needed to cover the extraordinary financial costs of cleaning and disinfecting in the event of an Avian Influenza outbreak. Having a dedicated resource to draw on will help facilitate a timely return to orderly marketing by providing incentive and support for producers to promptly initiate and complete the required cleaning and disinfecting process. As of the last significant outbreak in 2014, the provincial government indicated it may not provide financial compensation going forward.

¹ 2014 August 14. BCFIRB. Supervisory Decision – Sounds Marketing Policy and Board Authority – Mandatory Poultry Disease Insurance.

Rather than making insurance mandatory and/or establishing a captive insurance company, the Chicken Board, Hatching Egg Commission and Turkey Board propose the use of internally restricted funds, established through existing *NPMA* levy authorities. Each board commits to using the internally restricted fund for disease costs and losses arising from cleaning and disinfecting equivalent to their respective shares in the poultry industry under a signed agreement.

The three boards do not propose an increase in levies to establish the restricted funds. The Turkey Board confirms it has had a restricted fund in place since 2006 for disease events from producer levies, the Chicken Board confirms it has sufficient contingency funds in place from grower levies and over marketing and domestic lease fees; and, the Commission confirms it has sufficient contingency funds in place from producer levies.

The Egg Board's position is that individual egg producer insurance available through the Canadian Egg Industry Reciprocal Alliance (CEIRA), or other private insurance companies, provides the necessary level of coverage for cleaning and disinfecting costs. While the Egg Board has not made notifiable Avian Influenza insurance coverage mandatory, it has a mitigation plan in place for those producers who do not have insurance coverage (a small proportion of BC producers). The other three poultry boards agree the Egg Board's approach is sufficient to prevent unnecessary delay in initiating cleaning and disinfecting during any future notifiable Avian Influenza outbreaks.

The boards are committed to revisiting how risk is shared between them and cleaning and disinfecting costs in 2021.

Process

As reflected in the final submission, the poultry boards used a thorough step-by-step transparent and inclusive process to reach their final recommendations. BCFIRB commends the boards on their process, which has provided, a well thought out and collaborative approach to an issue with the potential to impact all poultry producers in the province.

Analysis

The submissions address BCFIRB's March 15, 2016 expectations, including:

- Using an appropriate SAFETI process to determine what, if any, insurance may be required to help ensure orderly marketing.
- Ensuring the resulting decision(s) reflects legal and sound marketing policy considerations.
- Making decisions and rationale publicly available in a timely manner.

Sound Marketing Policy

BCFIRB continues to agree that a timely return to orderly marketing following an Avian Influenza outbreak is sound marketing policy. In its August 2014 decision, BCFIRB states that

“[i]f at least some of these costs [including cleaning and disinfecting] are not covered through some means, there is likely risk that there would be a sufficient number of producers delaying return or exiting the industry such that a timely return to orderly marketing would be severely impacted.”

The proposal respects earlier BCFIRB sound marketing policy advice that financial coverage must focus on cleaning and disinfecting and not extend to business loss. The boards thoroughly explored and compared multiple compensation sources, including any existing government programs and insurance plans, as well as related costs, and legal and administrative considerations. The proposed measures rely on funding through existing monies from levies, and as such there is limited immediate impact on industry competitiveness. Use of contingency funds to immediately cover extraordinary cleaning and disinfecting costs addresses the issue of delaying a return to orderly marketing for the whole poultry sector which could result if boards were required to proceed via a compliance process (giving notice, issuing an order, seeking compliance). The recommendations also present a unified response to a shared issue.

Legal Authorities

In its August 2014 decision, BCFIRB identified a legal risk that the *NPMA* may not support the then proposed mandatory insurance scheme:

BCFIRB has concluded that the high level of legal uncertainty and prospect of challenge is such that proceeding to implement mandatory poultry insurance in the absence of clear legal authority under the *NPMA* is not in the best interest of the BC regulated poultry sector.

The Hatching Egg Commission, Turkey Board and Chicken Board now propose to use existing funds, established through the collection of levies authorized by the *NPMA*, to compensate producers for cleaning and disinfecting costs resulting from an emergency response to a notifiable Avian Influenza outbreak. These levies will not be expended for the establishment of an insurance fund or for the purchase of insurance. In the case of the Egg Board, it has encouraged registered producers to acquire insurance. For those egg producers that have not acquired insurance, it appears the board will access levy funds as part of its “mitigation plan” to pay for cleaning and disinfecting.

Decision

In its August 2014 decision BCFIRB ordered:

Should one or more of the board[s] propose proceeding with a more limited regulatory solution, that solution is to be submitted to BCFIRB, with rationale, for prior supervisory approval.

However, given the poultry boards’ proposed solution does not require further regulation, BCFIRB determines that prior approval is not required.

The internally restricted fund approach is not without some legal risk as neither the Chicken Board or Turkey Board has the s. 11(1)(o)(iii) powers in the *NPMA* to use levies or charges “to pay costs and losses incurred in marketing a regulated product”. However, in BCFIRB’s view, the broad purposes of the *NPMA* and the 2015 amendments relating to biosecurity, taken alongside the sound marketing policy arguments advanced by the poultry boards in support of

timely payment of cleaning and disinfecting costs to restore orderly marketing, are sufficient to support the use of levies for this purpose. The limited residual legal risk to the Chicken Board and Turkey Board due to the absence of s. 11(1)(o)(iii) type powers could be eliminated by incorporating these powers into their respective schemes. When the province considers making minor regulatory amendments under the *NPMA*, BCFIRB would support proposals requesting these changes.

Best Regards,

A handwritten signature in black ink, appearing to read 'Peter Donkers', with a large, sweeping flourish extending upwards and to the right.

Peter Donkers,
Chair

cc: BCFIRB web site